REMARKS/ARGUMENTS

Claims 29-50 are pending in this application. Reconsideration in view of the following remarks is respectfully requested.

1. Claims 29-50 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Gibbons et al (USP 4,888,222) in view of Hartman et al (USP 5,180,802).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Indeed, both the suggestion and the expectation of success must be found in the prior art, not in the Applicant's disclosure. In re Vaeck, 20 USPQ2d 1438 (Fed. Cir. 1988) (emphasis added). More specifically, the Federal District Court of D.C., which has jurisdiction over the USPTO, recently ruled that the suggestion or motivation to modify or combine prior art must be explicit in the prior art. (See Winner Int'l Royalty Corp. v. Wang, 48 USPQ2d 1139 DC 1998). The Applicants believe that the Examiner has failed to make a *prima facie* case of obviousness for the following reasons.

Gibbons et al requires a "caulk" or "tie" layer between the "abuse resistant layer" and the "oxygen barrier layer". See FIGS. 1, 3, 4 and 5, and lines 2-12 of column 5, line 60 of column 5 to line 1 of column 6, lines 20-24 of column 6, and lines 40-44 of column 6. The present invention as recited in independent claims 29 and 35 excludes such an intermediate caulk or tie layer by requiring that the first oxygen barrier layer of EVOH by applied directly onto the

polyamide layer. Note that FIG. 2 of Gibbons et al. does not even have the "abuse resistant" or polyamide layer, and in FIG. 5 it is not applied to the interior surface of the paperboard substrate, as required by Applicants' claims. Moreover, Applicants' claims require a polyamide layer consisting essentially of one or more polyamides applied directly onto the first surface of the paperboard substrate. The Examiner acknowledges that Gibbons et al. fail to disclose a polyamide layer consisting of a polyamide, but contends that Hartman et al. teach a caulk comprising a polyamide in the making of a container.

However, Hartman et al. is not even related to the field of the present invention, a non-foil barrier laminate to improve shelf life of packaged food products, particularly beverages such as fruit and citrus juices. In the present invention:

"Shelf stability" results from commercial sterilization of the contents of the package; hence, the product that is packaged exhibits no microbial growth over a period of time and is microbiologically stable.

"Package" is the container that holds the product, which may be in the form of cartons, cups, canisters, pouches, plastic bottles, bags and the like.

"Caulk" – a caulking layer melts to some extent in subsequent heating steps, filling channels that form when the laminate is folded and heat sealed to form a container.

"Polyamide" is a material that is a layer of the laminate.

In Hartman et al., "polyamide" is used as a rheological additive (see col. 2, lines 40-43), clearly a distinctly different use than in the present invention. Moreover, "package stability" relates to the formulation of products such as sealants, adhesives, and coatings (col. 2, line 34). An example of such a product is building material (like caulk) used to seal bathroom fixtures (e.g., bathtub to floor or wall) or gaps along a window sill. In Hartman et al., the rheological

additives are included in the products to modify flow characteristics and to control sag or slump during and after application. "Package stability" is the ability of the formulation to remain stable and not separate after the product is mixed and packaged. In Table I of column 11, package stability was assessed as no appreciable change in viscosity or appearance of the product after aging for seven days. Thus, Hartman et al. is so remote from the field of Gibbons et al. (and the invention) that one of ordinary skill in the art would have no reason to combine these references and modify the Gibbons et al. laminate container for food and non-food products. Even combining the references would still not provide Applicants' invention since polyamide is merely a rheological additive in the products of Hartman et al. According to column 5, lines 33-40, the polyamide is used at a level of about 0.5-5% by weight of the product. It represents 1.5-2.0% by weight of the products in Examples 5 and 6. Thus, the substitution of a Hartman et al. caulk for the caulk of Gibbons et al. would still not provide a polyamide layer consisting essentially of polyamide applied onto the paperboard substrate.

In view of the above, it is submitted that Gibbons et al in view of Hartman et al. does not disclose or suggest the present invention. The references do not motivate a person of ordinary skill in the art to modify their products to arrive at the claimed invention with a reasonable expectation of success in achieving its advantages. Thus, the cited references are deficient and the rejection should be withdrawn.

CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Reconsideration and allowance of claims 29-50 is requested.

Should the Examiner have any questions about this response, he is invited to contact Applicants' representative at the telephone number listed below.

Respectfully submitted,

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